

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7107 of 2003

WITH

Special Civil Application No. 7796 of 2003

with

Special Civil Applns. No.10605 of 2003 to 10639 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HAZI USMANBHAI MALKANI & Others.

Versus

STATE OF GUJARAT & Ors.

Appearance:

1. Special Civil Application No. 7107 of 2003
MR BHARAT T RAO for Petitioner No. 1-18
Ms. Darshana Pandit, AGP for Respondents in SCA Nos.
7107 of 2003, 7796 of 2003 and SCA Nos. 10605 to
10619 of 2003.
Mr. PD Bhate, AGP for Respondents in
SCA Nos. 10620 to 10629 of 2003.
Ms. Falguni Patel, AGP for respondents in
SCA Nos. 10630 to 10639 of 2003.

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 01/10/2003

ORAL JUDGEMENT

All these petitions are filed seeking direction from this Court to the respondents to restrain them from evicting the petitioners from the existing place, namely Survey No. 447/1/A Paiki (Old Survey No. 46) of Moje Vadva, Taluka and District Bhavnagar (which is known as Khumbharwada Madiya Road), and also seeking a further direction to take final decision for regularisation of the land in favour of the petitioners.

2. Earlier, one Saiyadali Abdulla Mansuri and others had filed Special Civil Application No. 1691 of 2003 before this Court seeking similar directions and that was disposed of by this Court (Coram: Jayant Patel, J.) on 6.5.2003 by giving following directions:

"4. Without expressing any opinion on the right of the petitioners to have the land, it is directed that if such representation is made by the petitioners to the Collector, the Collector shall decide the same as early as possible preferably within a period of three months from the date of receipt of such representation."

3. Mr. BT Rao, learned advocate appearing for the petitioners submits that pursuant to the above direction, the petitioners in that petition have made representation before the respondent authorities on 3.6.2003. However, till this date the said representation has not been decided despite the fact that a period of three months prescribed in the said order has already been over.

4. Mr. Rao has further submitted that in Special Civil Application No. 7107 of 2003, this Court has granted the interim relief in terms of Para 31(b) of that petition, i.e., SCA No. 7107 of 2003. He has, therefore, submitted that in this group of petitions, i.e., SCA No. 7796 of 2003 as well as SCAs. No. 10605 to 10639 of 2003, similar direction may be given to the respondent authorities and interim relief may be granted to the petitioners till the representation is decided by the respondent authorities.

5. It is the case of the petitioners in this group of petitions that the petitioners are carrying on activities of selling M.S. scraps which are brought from the Alang Ship Breaking Yard into their respective plots (Dela) at Survey No. 447/1/A paiki (Old Survey No. 46) situated in Juna Vadva area, Taluka and District Bhavnagar, since many years. It is further stated that the said area has been declared as industrial zone by the Bhavnagar Urban Development Authorities. Originally, the

entire land was auctioned by the Bhavnagar Nagarpalika in the year 1965-66 and has been given at the rate of Rs.1 per sq.yard. Most of the people have got the benefit of the particular auction held by the Nagarpalika and that most of the persons had purchased the said land. It is further stated that 25000 sq.yards of land of this survey number is claimed to be owned by one Gambhirsinh Bhupatsinh Bhatti of Vardhaman Nagar, Bhavnagar and most of the petitioners have taken the land on lease from the said Gambhirsinh Bhupatsinh Bhatti and necessary lease deed has been executed in favour of the respective petitioners and all these petitioners are in possession of the lands for the last about more than 20 years. It is further stated that the petitioners have got the electricity connection from the Gujarat Electricity Board and also received telephone connections in their respective sheds. Mr. Rao has further submitted that the respondent No.2, Collector, Bhavnagar, without issuing legal notice as contemplated under the Bombay Land Revenue Code has demolished the construction made by the petitioners on their respective plots between 20th to 30th December 2001. It is further stated that the Association of Scrap Sellers with the help of Bhavnagar Chamber of Commerce has raised objections and thereafter the respondent No.2 Collector has decided to consider the case of the petitioners. He has further submitted that detailed representations are made by each of the petitioners, however, the same has not been considered by the respondent authorities till this date. He has further submitted that the petitioners have been facing lot of harassment from the respondent authorities and hence the petitioners have to move before this Court seeking appropriate relief in the matter.

6. I have considered the submissions made by Mr. Rao and also the facts stated in each of the petitions. Ms. Pandit, the learned AGP, appearing for the respondent authorities has submitted that the petitioners are encroachers and they have no right to stay on the said land. The land held by them are to be disposed of by sale through auction and for that purpose the petitioners are required to be evicted from the said land. In light of the submission made by Ms. Pandit and in light of the fact that the representation is still pending before the respondent authorities and in the light of the earlier order passed by this Court to consider the representations within a stipulated period, this Court is of the view that all these petitions can be disposed of by giving directions to the respondent authorities to consider the representations made by the petitioners as expeditiously as possible preferably

within a period of 3 months from today. Though in the earlier matter, this Court has prescribed time limit of three months for taking decision on the representation, it appears that still the said representation is not disposed of. The respondent authorities are, therefore, directed to consider all the representations in together and take appropriate decision after giving proper opportunity to the petitioners and decide the matter finally as to whether their possession of the land is to be regularised or not. Till the said representations are decided, the respondent authorities are directed not to disturb the possession of the petitioners. However, it is made clear that this order will not come in the way of the respondent authorities to hold auction for the land in question and if the auction is to be held the petitioners would participate in such auction and ultimately as per the outcome of such auction if the petitioners are required to evict from the property, then in that case they would hand over the possession to the respondent authorities without any objection or creating any hurdle in that process. This interim protection is granted only on this condition and if any attempt is made by the petitioners to thwart the auction process, the interim relief stands vacated.

7. With the above directions, all the petitions are accordingly disposed of. Notice is discharged without any order as to costs. Direct service is permitted.

rmr. [K.A. Puj, J.]